

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 417 Novelty Lighters

**SPONSOR(S):** Plakon and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 806

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	_____	Krol	Kramer
2)	Insurance, Business & Financial Affairs Policy Committee	_____	_____	_____
3)	Criminal & Civil Justice Policy Council	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 417 makes it a second degree misdemeanor to sell or distribute novelty lighters.

This bill provides a definition for the term novelty lighter as a mechanical device that uses a flammable gas or liquid or an electrical current and resembles any item that is appealing to children 10 years old or younger, such as a lighter that resembles a:

- Cartoon character
- Animal
- Toy
- Gun
- Watch
- Musical instrument
- Vehicle
- Food
- Beverage
- Or, an item that plays sounds or musical notes or displays flashing lights or other visual effects.

This bill exempts lighters that were manufactured before January 1, 1980 or lighters that are considered collectibles.

This bill also provides that a second offense will be a first degree misdemeanor.

This bill provides a start date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Background*

The federal Consumer Product Safety Commission sets standards for cigarette lighters.<sup>1</sup> The relevant federal regulation defines the term "novelty lighter" as "a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel."<sup>2</sup>

The federal regulation specifies that novelty lighters must be child resistant. In order to establish this each lighter is put through a test panel of children aged 42-51 months (3.25 to 4.25 years of age.)<sup>3</sup> A lighter that is identical to the lighter being tested but produces no flame, only a click to signify activation,<sup>4</sup> is presented to a panel of 100 children. A novelty lighter is considered child resistant when 85% of a panel cannot successfully operate the lighter.<sup>5</sup>

While data is available on fires started with lighters, there is currently no data available on fires started with novelty lighters. Starting January 1, 2008 the United States Fire Administration's National Fire Incident Reporting System will collect information specifically on novelty lighters to replace the more general term of "cigarette or cigar lighter."

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<sup>1</sup> 16 C.F.R. 1210 (Safety Standard for Cigarette Lighters)

<sup>2</sup> 16 C.F.R. 1210.2(d)

<sup>3</sup> 16 C.F.R. 1210.4(a)

<sup>4</sup> Surrogate lighter defined in 16 C.F.R. 12.02(f)

<sup>5</sup> 16 C.F.R. 1210.4(h)

Ordinances in various cities and state laws in Tennessee<sup>6</sup> and Maine<sup>7</sup> prohibit the sale and distribution of novelty lighters.

Currently there is no law in the state of Florida that prohibits the sale or distribution of novelty lighters.

*Bill Effect*

This bill would create a second degree misdemeanor penalty<sup>8</sup> for anyone who sells, gives away, or distributes novelty lighters to the public in the state of Florida.

This bill provides a definition for the term novelty lighter as a mechanical device that uses a flammable gas or liquid or an electrical current and resembles any item that is typically appealing to or intended to be used by children 10 years old or younger, such as a lighter that resembles a:

- Cartoon character
- Animal
- Toy
- Gun
- Watch
- Musical instrument
- Vehicle
- Food
- Beverage
- Or, an item that plays sounds or musical notes or displays flashing lights or other visual effects.

This bill exempts lighters that were manufactured before January 1, 1980 or lighters that are considered collectibles.

This bill also provides that a second offense is punishable by a first degree misdemeanor.<sup>9</sup>

**B. SECTION DIRECTORY:**

Section 1. Defines novelty lighter and creates penalties for the sale and distribution of novelty lighters.

Section 2. Provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>6</sup> Title 47 Chapter 18 T.C.A. §47-18-129

<sup>7</sup> Title 25 Chapter 317 M.R.S. §2467

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in a jail and a \$500 fine, ss. 775.082 and 775.083, F.S.

<sup>9</sup> A first degree misdemeanor is punishable by up to a year in a jail and a \$1000 fine, ss. 775.082 and 775.083, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill creates a second degree misdemeanor offense relating to selling or giving away a novelty lighter. This may have a county jail impact.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will affect businesses that sell or distribute novelty lighters.

**D. FISCAL COMMENTS:**

See above.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill provides an exception for "lighters that are considered collectibles." It is not clear what types of lighters may be considered collectible and whether the fact that the seller considered the item to be a collectible would be sufficient for this exception to apply.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**